IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

D.B.CIVIL SPECIAL APPEAL(W) NO.602/2007.

Dr.Balvinder Singh Thakkar and ors.
Vs.
State of Rajasthan and ors.

Date of Judgment : 31 May, 2007.

QUORUM
HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

REPORTABLE

Shri R.C. Joshi for the appellants.
Shri Harshvardhan Nandwana Dy.GA for State.
Shri S.N. Kumawat for respondent No.2 RPSC.
Shri R.A. Katta for respondent No.3 University of Rajasthan.

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BY THE COURT:(Per Hon'ble Mohammad Rafiq J.)

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This appeal is directed against the interim-order dated 11/4/2007 whereby the learned Single Bench while admitting

the writ petition, declined to stay the process of selection and appointment on the post of Assistant Professor (Dentistry) holding that even if the qualification prescribed in the impugned notification / advertisement are struck down by this Court, the same can be applied only perspectively.

Bone of the contention between the parties is educational qualification for appointment on the post of Assistant Professor in Dentistry. An advertisement was issued by the Rajasthan Public Service Commission for appointment on that post on 25/11/2005. Advertisement indicated “B.D.S. preferably with M.B.B.S.” as the eligible qualification, in relevant column for appointment on this post, whereas there was an additional note given for required training and experience wherein the candidates were required to also possess the degree of Post Graduation conferred

by the Rajasthan University and recognised by the Medical Council of India and the candidates should be registered as such.

We have heard Shri R.C. Joshi, learned counsel for the petitioner, Shri S.N. Kumawat, learned counsel for Rajasthan Public Service Commission, Shri R.A. Katta, learned counsel for the University of Rajasthan and Shri B.S. Chhaba, learned Deputy Government for the State.

Shri R.C. Joshi, learned counsel for the petitioner argued that the learned Single Judge erred in law in not appreciating that the eligibility criteria notified by the R.P.S.C. was contrary to the amended as also the un-amended University Ordinances and the Rajasthan Medical Service (Collegiate Branch) Rules, 1962, each of which provided the Post Graduation degree as an essential qualification for appointment

on the post of Assistant Professor. He referred to Rule 12 of the Rules of 1962 which provides that the “candidate for direct recruitment to the posts specified in Part A, B and C of Schedule 1 shall possess such academic and technical qualification and experience as is laid down, from time to time by the Rajasthan University for the teaching staff in Medical Colleges.” The un-amended Ordinance 65 of the Hand Book of University of Rajasthan provided for the B.D.S. Degree of an Indian Institution or its equivalent qualification with Post Graduate (M.D.S.) in the subject as the necessary qualification. Clause 65(3) of the amended University Ordinances provides that “Medical Teachers in all Medical Colleges except the Tutors, Residents, Registrars and Demonstrators must possess the requisite recognised post-graduate medical qualification awarded by the University of Rajasthan in

their respective subjects.” Shri Joshi further argued that requiring “B.D.S. preferably with M.B.B.B.” reflected total non-application of mind on the part of the respondent-Rajasthan Public Service Commission because no candidate who has passed out B.D.S. can be M.B.B.S., particularly when both streams are mutually exclusive. Learned Single Judge therefore committed an error of law in not restraining the R.P.S.C. from going ahead with the process of selection on the basis of illegally prescribing eligibility criteria. Learned Single Judge also erred in law in holding that even if the writ petition is finally allowed and the qualifications wrongly prescribed are struck down, yet the judgment would be prospective in its application. Shri Joshi therefore prayed that the impugned-order may be set-aside and the respondents may be restrained from going ahead with the process of

selection or in the alternative they be directed to consider only such candidates who possess B.D.S. with Post Graduation degree in Dentistry recognised by the Medical Council of India.

Shri S.N. Kumawat, learned counsel appearing for the R.P.S.C. and Shri R.A. Katta, learned counsel for University of Rajasthan while opposing the writ petition argued that the prescription of the qualification of “B.D.S. preferably with M.B.B.S.” in the aforesaid advertisement of B.D.S. was based on Instructions issued by the Medical Council of India which was specifically contained in the M.C.I. Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 (in short, “MCI Regulations”). While referring to the subject “Dentistry” in Table 1 appended to the aforesaid MCI Regulations, Shri Kumawat argued that the eligibility qualification for appointment

on the post of Assistant Professor / Lecturer has been prescribed as “B.D.S. preferably with M.B.B.S.” and the Post Graduate degree qualification in the concerned subject is indicated in the column relating to teaching / research experience. He submitted that the qualifications prescribed in the amended University Ordinances for teachers in the subject of Dentistry are exactly those which have been prescribed by the MCI Regulations including for the post of Assistant Professor / Lecturer. The prescription of qualification in the impugned advertisement was therefore in conformity with the MCI Regulations and the University Ordinances.

We have given our thoughtful consideration to the rival submissions made by the parties at the bar and perused the material available on record.

On perusal of the MCI Regulations, we find that these Regulations have

indicated the eligibility qualification for appointment on the post of Assistant Professor / Lecturer as B.D.S. preferably with M.B.B.S. and have separately indicated recognised qualification of Post Graduation in the subject under the column “research/experience”.Prescription of qualification of Teachers in Medical Colleges appears to have been bodily lifted from the MCI Regulations and engrafted into the amended University Ordinances as would be evident from comparison of the two.

Action of the respondent-R.P.S.C. in indicating qualification of “B.D.S. preferably with M.B.B.S.” in the advertisement cannot therefore be said to be wholly unfounded. Since the writ petition is still pending and we are merely considering the correctness of the interim-order passed by the learned Single Judge, we do not wish to examine

validity of the prescription of qualification “B.D.S. preferably with M.B.B.S.” for appointment on the post of Assistant Professor / Lecturer, notwithstanding clause 65(3) of the University Ordinances. Though, there is a Central enactment by the caption of “Dentistry Act, 1948” but on careful perusal of the said Act, we find that the said enactment provided for regulation of the profession of Dentistry and the pre-dominant purpose of the Act of 1948 is to constitute Dental Council and permit establishment of new dental colleges, new courses of studies, and periodical inspection of such dental colleges. Though Section 10 of the Act of 1948 provides that the dental qualification, granted by any authority or institution in India, which are included in Part-I of the Schedule thereof, shall be recognised dental qualification for the purpose of this Act but beyond that we have not been

able to find other provision empowering the Dental Council to regulate the standards education in various dental colleges or prescribing the qualification for teaching staff. There is although other Central enactment known by the name of “Indian Medical Council Act, 1956”, which also provide for the recognition of medical qualification, setting up of new medical colleges and registration of the medical practitioner. Section 33 of the Act of 1956 however provides that Medical Council of India may, with the previous sanction of the Central Government, make regulation generally to carry out for the purpose of this Act which may provide for; (k) the standards of staff, equipment, accommodation, training and other facilities for medical education and (l) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations. When we compare similar

power conferred on the Dental Council in Section 20 of the Act of 1948, we find that Section 20 of the said Act in its clause (2) has although conferred powers on the Dental Council to frame regulations with the approval of the Central Government but its sub-clause (g) merely provides for the prescription of standard curricula for the training of dentists and dental hygienists, and the conditions for admission to courses of such training and sub-clause (h) prescribes the standards of examinations and other requirements to be satisfied to secure recognisation of the qualifications under this Act but no such power which has been specifically reserved for Medical Council of India for framing Regulations regarding standard of staff, equipment, accommodation, training and other facilities for medical education and conduct of professional examination qualification for examiners

etc. have been conferred on the Dental Council of India. We therefore have no option but to accept the competence of the Medical Council of India in the MCI Regulations to lay down the qualifications for appointment of teachers in Dental Colleges as well as in Medical College. This is a field which is reserved to Medical Council of India by virtue of entry 65 and 66 of the List I of the VII Schedule to the Constitution. This much is for competence of the Medical Council of India to prescribe impugned qualification and on that basis prescription of the same qualification in the advertisement by the respondents. What is intelligible differentia and logic behind prescribing “B.D.S. preferably with M.B.B.S.” in the matter of appointment on the post of Assistant Professor in Dentistry and what was reasonable nexus it has got with object sought to be achieved particularly when

the last column in Table-I appended to the University Ordinances and the MCI Regulations as also the advertisement prescribe post graduate degree in Dentistry as one of the desirable qualifications under the head of “training & experience”, would be subject-matter of examination by the learned Single Judge in the writ petition.

In our considered view, however, the apprehension of the petitioner that candidates without the qualification of Post Graduation in Dentistry or candidates having only qualification of B.D.S. with M.B.B.S. might secure appointment in the ongoing process of selection, in preference to the petitioner and others who have qualification of B.D.S. as also the Post Graduation in Dentistry, may not be well founded till such candidates are actually selected and appointed. It is premature

to say that appointment of such candidates in preference to those who holds the qualification of Post Graduation would be made, especially when, while indicating the qualification of B.D.S. preferably with M.B.B.S., Post Graduation in Dentistry has still been retained as requisite training / experience, though one may agree or not with the logic of prescribing such post graduation qualification as training and experience.

We, however, are not persuaded to uphold that part of the impugned-order where learned Single Judge has held that even if the qualification prescribed in the impugned advertisement were to be struck down finally by this Court, the same would apply only perspectively. There is no reason, why, if eventually prescription of the aforesaid qualification is held to be illegal, appointments made on the basis of such

qualification are saved. While directing deletion of that part of the order, we are not inclined to interfere any further.

The special appeal is accordingly partly allowed and the impugned order would stand modified in the terms indicated above.

(MOHAMMAD RAFIQ), J. **(S.N. JHA), CJ.**

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